

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.2620 of 2015 (O&M)

Date of decision : 05.09.2018

Anguri Devi

...Appellant

Versus

Municipal Council, Narnaul and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aman Bahri, Advocate for the appellant.

Mr. Deepak Manchanda, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while dismissing her suit for granting decree for permanent injunction restraining the defendant-Municipal Council, Narnaul from interfering into her possession and from demolishing the shop in dispute on the basis of the notice dated 08.01.2004.

The plaintiff claimed that she is owner as property on the North side was purchased by one Anand Parkash vide sale deed dated 28.03.1993 from Sh. Har Lal, wherein the property of the plaintiff was shown towards the South. It is further pleaded that even in the sale deed executed by Geegraj in favour of Har Lal Sharma dated 02.01.1979, the property of the plaintiff was shown towards South.

The defendants contested the suit and pleaded that the plaintiff has encroached upon a common passage and the property does not belong to

the plaintiff.

Both the Courts below after examining the evidence have found that the plaintiff has failed to prove her title in the property. The plaintiff appeared in the witness box through Sanjay Kumar (her son). No document of title was produced.

Learned counsel for the appellant has submitted that the plaintiff is at least entitled to injunction once she is in settled possession. He further submitted that notice issued on 08.01.2004 was wrong as it was issued under Section 235 of the Haryana Municipal Act, whereas Section 235 is not applicable for removing unauthorized encroachment.

He has further submitted that the oral evidence on behalf of the defendants, who had appeared as only witness but did not come forward for cross-examination, therefore, his evidence cannot be looked into.

This Court has considered the submission. It is not in dispute that the plaintiff failed to prove her right, title or interest in the property. In such a situation, the defendant-Municipal Committee had issued a notice to the plaintiff calling upon her to remove her illegal construction which is alleged to be a part of the street. No doubt, the notice has been issued under a wrong provision of law but that would not improve the case of the plaintiff. Under the Haryana Municipal Act, 1973, the Municipal Committee is entitled to get the illegal construction removed by issuing notice. Once the plaintiff wishes to protect her possession, she has to prove and establish, right, title or interest in the property which she has failed to show.

In the considered opinion of this Court, particularly while dealing with the public property, the Court should be careful in granting

even temporary injunction. The public property is for the benefit of the public at large and continuous encroachment should not be encouraged by the Court by granting injunction. The plaintiff has to stand on his own legs. The plaintiff, in the present case, has failed, therefore, merely because official of the defendant did not come forward for facing cross-examination that would not make any difference. The Courts have examined the evidence produced by the plaintiff and have found that the plaintiff has failed to prove her title.

Still further, merely because in some other sale deeds, the property of the plaintiff has been shown towards South, that cannot be treated as a document of title. The plaintiff, although, claimed that she is owner but has failed to produce any evidence.

As noticed by this Court, no doubt, the notice dated 08.01.2004 is not in accordance with the provisions of Haryana Municipal Act, however, keeping in view the aforesaid facts, while dismissing the appeal, liberty is granted to the Municipal Council, Narnaul to issue proper notice and thereafter take action in accordance with law.

In view of the above, the present Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

05.09.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No